Supreme Court, U. S.
FILED
AUG 11 1980
MICHAEL RODAK, JR., CLERK

No. 80-45

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

EUGENE JOHNSON, III,

Petitioner,

v.

J.O.L., II,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF FOR J.O.L., II, IN OPPOSITION

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August 11, 1980

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QUESTION PRESENTED

Is there any constitutional bar to a state statute which authorizes adoption of a child over the objection of a natural parent where the trial court finds, after a hearing, that the parent's consent is withheld contrary to the best interests of the child, even though there is no finding of parental abandonment.*

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*Respondent's statement of this question varies from petitioner's statement of his first question since petitioner's statement fails accurately to reflect the language of D.C. Code § 16-304(d) and (e) upon which the decision below was based.

There are no grounds for the court to review the second question presented by petitioner. There is no evidence in the decision below which indicates that a lesser constitutional standard was applied to a divorced parent than to one who is not divorced and there is nothing in the statute involved below which supports the assumption that such lesser standard was applied.

The third question presented by petitioner is also faulty as it inaccurately assumes the "lack of any specific substantive, procedural and evidentiary standards" for the interpretation of the adoption statute involved below.

PARTIES TO THE PROCEEDING

Petitioner is Eugene Johnson, III. Respondent is J.O.L., II. The mother of the adoptees, referred to by petitioner as the "former wife" (Pet. *ii*), was not a party below.

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Statute:

D.C. Code § 16-304 1

STATUTE INVOLVED

D.C. Code § 16-304 provides:

(a) A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, as provided by this section, signed and acknowledged before an officer authorized by law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Mayor of the District, or unless a relinquishment of parental rights with respect to the prospective adoptee has been recorded and filed as provided by section 32-786.

(b) Consent to a proposed adoption of a person under eighteen years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the court-appointed guardian of the prospective adoptee; or

(D) from a licensed child-placing agency or the Mayor in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Mayor or licensed child-placing agency, based upon consents obtained in accordance with paragraphs (A) through (C) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; or

(E) from the Mayor in any situation not otherwise provided for by this subsection.

(c) Minority of a natural parent is not a bar to that parent's consent to adoption.

(d) When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

(e) The court may grant a petition for adoption without any of the consents specified in this section, when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

(f) A person over eighteen years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted.

As amended July 29, 1970, Pub. L. 91-358, Title 1, § 145(a)(2), 84 Stat. 555: Oct. 22, 1970, Pub. L. 91-488, 84 Stat. 1086; July 22, 1976, D.C. Law, No. 1-75, § 5(e), 23 D.C. Reg. No. 6, pp. 1177; Oct. 1, 1976, D.C. Law, No. 1-87, § 12, 23 D.C. Reg. No. 6, p. 1134.

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STATEMENT OF THE CASE

On March 31, 1977, respondent (petitioner below) filed a petition for adoption in the Superior Court of the District of Columbia, Family Division, seeking adoption by respondent of the adoptees, Judith and Elliott. Respondent is married to the mother of the adoptees. Petitioner (respondent below), the biological father of the adoptees, withheld his consent to the petition.

Pursuant to D.C. Code § 16-304(e), a full evidentiary hearing was held on May 24, 25 and 26, 1978. The court entered its memorandum opinion and order on

August 3, 1978, granting the petition for adoption. Said order was affirmed by the District of Columbia Court of Appeals on December 10, 1979 and petitioner's petition for rehearing *en banc* was denied on March 27, 1980.

Petitioner and the mother of the adoptees were formerly husband and wife. Two children were born of that marriage, to wit, Judith, born October 28, 1964, and Elliott, born January 27, 1966.[1] Petitioner and the mother of the adoptees separated from each other in August 1967 and were divorced from each other on June 28, 1968 (Pet. App. 2).

Respondent and the mother of the adoptees were married to each other on April 25, 1969. A child was born of that marriage on October 16, 1972. The adoptees have lived with respondent since his marriage to their mother, a period of over nine years, as members of a nuclear family (Pet. App. 2). The trial court found that respondent was a good father to the adoptees and that they regarded him as their psychological father (Pet. App. 3). The trial court found that respondent's attention to the emotional needs of and development of the adoptees has been salutary (Pet. App. 3).

In July 1972, pursuant to an order of the Superior Court of the District of Columbia, petitioner was given certain visitation rights with the adoptees (Pet App. 4). Despite this order, petitioner visited with the adoptees on only three occasions, the last such visit having occurred in October 1972 (Pet. App. 4). Prior to the July 1972 order, petitioner had seen the adoptees only sporadically and infrequently (Pet. App. 3). Petitioner

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[1]The decision below states that Elliott's date of birth is January 27, 1967, while in fact it is January 27, 1966.

has not visited with the adoptees since October 1972. Petitioner voluntarily ceased to make support payments for the adoptees in February 1973 (Pet. App. 4). Petitioner has been hospitalized for a mental illness and there was some question as to his use of illegal drugs (Pet. App. 3, 16).

There was uncontroverted evidence at trial that the adoptees found the visits with petitioner to be emotionally painful and that such visits had an adverse emotional effect on them (Pet. App. 4, 11).

In March 1977, respondent filed the petition for adoption, after consultation with a child psychiatrist (Pet. App. 4). After the petition was filed the social service department recommended that the petition for adoption be granted (Pet. App. 9).

The trial court, in weighing the best interests of the adoptees, found that the adoption would give final security to the family unit of which the adoptees were in every way an integral part and that denial of the adoption would leave the children to wander upon a course of uncertainty (Pet. App. 13).

The trial court held that the adoption of the adoptees by respondent was in the best interests of the adoptees and that petitioner withheld his consent contrary to said interests (Pet. App. 9, 13). Accordingly, the trial court granted the petition for adoption (Pet. App. 13).

ARGUMENT

1. Petitioner contends that the petition for writ should be granted on the basis that the ruling below has decided an important question of federal law affecting a large number of divorced citizens which has not but should be settled by this Court, and which appears in

conflict with dicta from this Court. This contention is without merit.

Petitioner refers to recent statistics regarding the frequency of divorce in the past decade (Pet. 16). While such statistics are evidence of the frequency of divorce, they do not support petitioner's contention that adoption by a stepparent without the consent of one of the biological parents is a frequent occurrence or one which affects a large number of divorced citizens. Petitioner presents no evidence that such is the case. Indeed, the only case cited by petitioner which involves the rights of a biological parent in circumstances similar to those in the decision below is *Ward v. Faw*, ___ Va. ___, 253 S.E.2d 658 (1979). There is no evidence in that case, or any other cited by petitioner, as to the frequency of such factual circumstances.

Petitioner also contends that the ruling below has decided an important question of federal law in a manner which "appears" in conflict with dicta from this Court.

It is important to note that petitioner does not contend that the ruling below conflicts with any decision of this Court. Contrary to petitioner's contention, the decisions of this Court are in harmony, rather than in conflict, with the principles set forth in the ruling below.

This Court consistently has held that one of the liberties protected by the due process clause of the Fourteenth Amendment is the "freedom to establish a home and bring up children." *Meyer v. Nebraska,* 262 U.S. 390, 399 (1923). *See also, Parham v. J.R.,* 442 U.S. 584 (1979); *Prince v. Massachusetts,* 321 U.S. 158 (1944); *Stanley v. Illinois,* 405 U.S. 645 (1972). These cases involve the issue of the constitutional limits of the state's power to supersede parental authority in matters involving the health, education and welfare of minor

children in the family unit when the opinion of the parents regarding such matters conflicts with that of the state.

This Court has guarded jealously the integrity of the family unit as a whole against intrusion by the state except when the physical or mental health of the children in the unit is jeopardized. The deference given to the family unit is based upon the recognition "that natural bonds of affection lead parents to act in the best interests of their children." *Parham v. J.R.*, 442 U.S. at 602. It is recognition of the familial relationship between parent and child and not their biological relationship which underlies the constitutional protection accorded parental authority in the family unit. *Smith v. Organization of Foster Families,* 431 U.S. 816, 843–844 (1977).

In *Quilloin v. Walcott,* 434 U.S. 246 (1978), this Court affirmed the decision of the Supreme Court of Georgia in granting a petition for adoption by a husband of his wife's illegitimate son over the objection of the biological father and stated:

> [T]he result of the adoption in this case is to give full recognition to the family unit already in existence, a result desired by all concerned, except appellant. Whatever might be required in other situations, we cannot say that the State was required in this situation to find anything more than that the adoption, and a denial of legitimation, "was in the best interests of the child."

Quilloin v. Walcott, 434 U.S. at 255.

The court below granted the adoption in order to give final security to the family unit in which the adoptees were in every way an integral part (Pet. App. 13). The court recognized that respondent was in fact the father

of the adoptees and reasoned that the adoption would benefit the children by providing respondent with the full legal authority to be able to act accordingly (Pet. App. 9, 11).

The decision below upheld the integrity of the family unit and strengthened the parent-child bond within it. Such decision is in harmony with the decisions of this Court.

2. Petitioner argues that the ruling below has decided the federal question in a way which conflicts with the decision of another state court and involves issues related to a cause now pending before it. This argument also is without merit.

Petitioner refers to a recent decision of the Supreme Court of Pennsylvania, *In re William L.*, 477 Pa. 322, 383 A.2d 1228 (1978), a recent decision of the Supreme Court of Arkansas, *Davis v. Smith,* ___ Ark. ___, 583 S.W.2d 37 (1979), and a case in which this court has noted probable jurisdiction, *Matter of Five Minor Children,* 407 A.2d 198 (Del. 1979), *prob. juris. noted* No. 79-5932 (S. Ct. March 24, 1980). All of these cases concern the constitutionality of statutes involving termination of parental rights rather than adoption. These statutes are dissimilar in both language and purpose to the adoption statute involved below and their constitutionality has no bearing upon the ruling below.

Petitioner's failure to recognize the distinction between such statutes and adoption statutes is indicative of his confusion regarding the distinction between family relationships, on the one hand, and biological relationships, on the other. It is the former and not the latter to which this Court has accorded priority.

Petitioner also argues that *Ward v. Faw*, ___ Va. ___, 253 S.E.2d 658 (1979), conflicts with the decision below. Petitioner's reliance upon this case is ill-founded and confused. There was no constitutional challenge to the statute involved in *Ward* and no discussion of its constitutionality either facially or as applied. Moreover, the decision of the Supreme Court of Virginia in *Ward* is consistent with the decision below. Contrary to petitioner's contention, the ruling below has not decided a federal question in a way that conflicts with the decision of another state court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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